

BEFORE THE OFFICE OF THE COMMISSIONER OF RAILROADS

STATE OF WISCONSIN

In the Matter of the:

Petition of the Village of Walworth for the Establishment of a Public Crossing of the Wisconsin & Southern Railroad Co. Tracks with the 5th Avenue Bike Path in the Village of Walworth, Walworth County

9170-RX-208

FINAL DECISION

By letter dated January 16, 2006, the Village of Walworth petitioned the Office of the Commissioner of Railroads (OCR) for the establishment of a public crossing of the Wisconsin & Southern Railroad Co. (WSOR) tracks with the 5th Avenue Bike Path located in the Village of Walworth, Walworth County.

Jurisdiction: Secs. 195.28 and 195.29, Stats.

Pursuant to due notice, public hearing was held in this matter on February 24, 2006, in Madison, Wisconsin with hearing examiner Douglas S. Wood presiding.

On March 20, 2006, the hearing examiner issued a proposed decision. On March 23 the Village of Walworth submitted comments supporting the proposed decision and noting a clerical error in the proposed decision. That error has been corrected. The Commissioner adopts the proposed decision as final.

Appearances:

Parties

Village of Walworth, Petitioner
by
Jeffrey Retzlaff, AICP, Senior Planner
Foth & Van Dyke
1402 Pankratz Street Suite 300
Madison, WI 53704

As Interest May Appear:

Wisconsin & Southern Railroad Company
by
Bernard M. Meighan, Superintendent of Maintenance
1890 E Johnson Street
Madison, WI 53704

Findings of Fact

THE COMMISSIONER FINDS:

The Village of Walworth proposes to establish a highway/rail crossing of 5th Avenue Bike Path with the Wisconsin & Southern Railroad Co. tracks. The Path would begin as an off-road trail at the intersection of 5th Avenue and Howard Street. The Path would extend across the tracks and provide bicycle and pedestrian access to a 24-acre city park currently under development.

The 5th Avenue Bike Path will consist of a 10'-wide asphalt surface with 2'-wide gravel shoulders and will intersect the tracks at an angle of about 90°. The crossing will consist of one mainline track. The Path will be open year-round to non-motorized users.

The nearest existing alternate crossings are about 1800' west at Main Street and about 1800' east at STH 67. Neither crossing would adequately serve as non-motorized access to the park from the south.

The railroad currently operates 2-4 through train movements per day over the proposed crossing location at a speed of 30 mph.

The available clearing sight distance from the stop signs will be adequate.

The order requires that the Village install fencing running parallel to the tracks for 100' in each direction from the nominal edge of the Path in each quadrant. This fence will encourage Path users to cross the tracks at the improved location. The Village shall also install a removable bollard or end-of-road markers south of the crossing to deter drivers of motorized vehicles from attempting to use the Path to cross the tracks.

Crossbucks, stop signs, pavement markings and advance warning signs will adequately protect public safety. The Village also plans to install overhead lighting in the vicinity of the crossing.

In summary, the establishment of the crossing at-grade of the Wisconsin & Southern Railroad Co. tracks with 5th Avenue Bike Path will promote public safety and convenience by providing a reasonably safe and improved location for non-motorized users to cross the tracks.

Source of funding: The Village shall bear all costs for the crossing construction and signing.

Timing: The Village proposed that the crossing be installed in 2006. However, the Village is uncertain

when the portion of the Path outside of the railroad right-of-way will be constructed. The order requires that the Village construct the Path from Howard Street into the city park at the time that the crossing is installed.

The order sets a deadline of August 31, 2007. However, the Village may install the crossing before that date provided that the Path is constructed from Howard Street into the park.

The railroad and the Village have agreed that the Village's contractor will install the crossing and warning devices.

Ultimate Conclusions on the Issues

THE COMMISSIONER CONCLUDES:

1. That the establishment of the crossing at-grade of the 5th Avenue Bike Path with the Wisconsin & Southern Railroad Co. tracks in accordance with the design plans of the Village of Walworth in the Village of Walworth, Walworth County will promote public safety and convenience.
2. That establishment of the crossing is advisable under all the circumstances.
3. That in order to adequately protect and promote public safety, it is necessary to install and maintain advance warning signs, reflective crossbucks, and stop signs.
4. That it is reasonable that the Wisconsin & Southern Railroad Co. bear no part of the cost for the crossing construction.

Conclusion of Law

THE COMMISSIONER CONCLUDES:

That the jurisdiction of the Office of the Commissioner of Railroads under §§195.28 and 195.29, Stats., extends to this matter. Accordingly, the Office enters an order consistent with the findings of fact.

Order

THE COMMISSIONER ORDERS:

1. That the **Village of Walworth with the agreement of the Wisconsin & Southern Railroad Co.** shall install and maintain a crossing at-grade of the 5th Avenue Bike Path with its tracks in accordance with the design plans of the Village of Walworth, Walworth County by **August 31, 2007**. The crossing shall not be installed until the Path is constructed from Howard Street into the city park.

2. That the **Village of Walworth with the agreement of the Wisconsin & Southern Railroad Co.** shall install and maintain retroreflective back-to-back crossbucks with 2" wide reflective vertical strips on the front and back of the support posts on each approach to the crossing of its tracks with 5th Avenue Bike Path at-grade in the Village of Walworth, Walworth County by **August 31, 2007**.

3. That the **Village of Walworth** shall install and maintain stop signs on separate posts on each approach to the crossing of the Wisconsin & Southern Railroad Co. tracks with 5th Avenue Bike Path at-grade in the Village of Walworth, Walworth County by **August 31, 2007**.

4. That the **Village of Walworth** shall install and maintain advance warning signs (sign W10-1) and "stop ahead" signs at a distance of 125' from the crossing on each approach.

5. That the **Village of Walworth** shall install and maintain pavement markings on each approach to the crossing.

6. That the **Village of Walworth** shall install and maintain fences running parallel to the tracks at the right-of-way line and extending 100' along the tracks in each quadrant.

7. That the **Wisconsin & Southern Railroad Co.** shall bear no part of the cost of the crossing construction, except for any cost assessed to the railroad pursuant to §195.60, Stats., for the investigation of this matter by the Office. The railroad shall not pass on those assessment costs either directly or indirectly.

8. That jurisdiction is retained.

Dated at Madison, Wisconsin, (April 21, 2006).

By the Office of the Commissioner of Railroads.

Rodney W. Kreunen
Commissioner of Railroads

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